

EXHIBIT 22

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VIRTAMOVE, CORP.,

Plaintiff,

v.

INTERNATIONAL BUSINESS
MACHINES CORP.,

Defendant.

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Case No. 2:24-cv-00064-JRG
(Member Case)

JURY TRIAL DEMANDED

**DECLARATION OF WALTER FALK IN SUPPORT OF DEFENDANT
INTERNATIONAL BUSINESS MACHINES CORP.'S MOTION FOR SUMMARY
JUDGMENT**

I, Walter Falk, hereby declare:

1. I am currently Head of Global AI Technology Partnerships at International Business Machine Corp. ("IBM"). I have been employed at IBM in the U.S. since 1995, and I have held a number of other roles at IBM over the years.

2. From 2009 to 2015, I worked as a Business Development Executive for IBM Enterprise Initiative. In that role, I was involved in IBM's SmartCloud global cloud ecosystem of business partners, cloud M&A, and strategic alliances, contributing to the overall strategic evolution of cloud computing with a particular focus on Platform-as-a-Service (PaaS).

3. I understand that in this action, VirtaMove, Corp. ("VirtaMove") is alleging infringement of U.S. Patent Nos. 7,519,814 and 7,784,058 by IBM.

4. I submit this declaration in support of IBM's Motion for Summary Judgment.

5. Unless otherwise indicated, I have personal knowledge of the facts contained in this declaration, or they are based on work conducted under my supervision and direction. If called upon to do so, I could and would testify competently to the matters set forth herein.

6. During my tenure as a Business Development Executive for IBM Enterprise Initiative, I was responsible for identifying and cultivating new business opportunities through partnerships. In the timeframe that I had that role, IBM was focused on expanding its cloud business, and a key priority was pursuing migration capabilities to help customers move their applications to IBM Cloud (formerly known as SoftLayer Cloud). My role included developing new partnerships to support these efforts.

7. One of the partnerships in which I was involved was with AppZero, a predecessor to VirtaMove.

8. In June 2014, as part of that partnership, AppZero and IBM entered into IBM Assistance Agreement #4914008281 (the "Assistance Agreement").

9. After entering into the Assistance Agreement, AppZero encouraged IBM to adopt application containerization—including the open-source Docker and Kubernetes container technologies—on IBM Cloud. AppZero's product was a container migration tool, and implementing a cloud infrastructure that supported and orchestrated application containers through the use of open-source technologies such as Docker and Kubernetes would allow customers to use AppZero's migration tool on IBM Cloud.

10. AppZero's suggestion that IBM use Docker and Kubernetes container technologies, together with a broad general industry shift towards open-source containerization, was a material factor in IBM's decision to implement Docker and Kubernetes on IBM Cloud. At the same time

other partners also either adopted or recommended Docker and Kubernetes as part of this broad industry move towards open-source containerization.

11. IBM invested significant monetary and engineering resources into making open-source Docker and Kubernetes available on IBM Cloud, culminating in the public release of the IBM Cloud Kubernetes Service in 2017. At least by the date of this release, VirtaMove was aware of IBM's work to make open-source Kubernetes and Docker available on the IBM Cloud.

12. At no point before VirtaMove filed its present lawsuit against IBM in January 2024 did VirtaMove or AppZero ever suggest that it would bring a patent infringement lawsuit against IBM for implementing open-source Docker and Kubernetes on IBM Cloud, nor did VirtaMove or AppZero suggest that using open-source Docker and/or Kubernetes would infringe any VirtaMove or AppZero patents.

13. Had VirtaMove or AppZero informed IBM that it would sue IBM for implementing open-source Docker and/or Kubernetes on IBM Cloud, IBM would have reevaluated its selection of containerization technologies, as several alternative container and container orchestration solutions—e.g., Apache Mesos, Rackware, and Joyent—were available and were being actively evaluated by IBM at the time.

* * *

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25 day of July, 2025 in Skuldelev, Denmark.



Walter Falk